



**MEETING OF THE
PROFESSIONAL SERVICES ADVISORY COMMITTEE (PSAC)**

Alan Schommer	Todd Smith	John Blum	Stephen Moler
Robert Gaskill	Warren Dill	Robert Brackett	George Kulczycki
	Ryan R. Morrell	Linda Schlitt Gonzalez	

Peter Robinson, Chairman

The PSAC will meet at **12:15 p.m. on Thursday, December 6, 2007, in First Floor Conference Room B1-501** of the County Administration Building "B" (North Building), 1800 27th Street

AGENDA

- I. Call to Order
- II. Approval of Minutes of the October 5, 2007 Meeting
- IV. Old Business: None
- V. New Business:
 - A. Consideration of Proposed LDR Amendments to Chapter 973 Public Nuisances
 - C. Consideration of Proposed Moratorium for Mines in Agricultural Areas
- VI. Matters by Members
- VII. Matters by Staff
- VIII. Adjournment

ALL MEETING MATERIAL IS BEING DELIVERED VIA EMAIL AND IS ALSO AVAILABLE ON THE COUNTY WEBSITE AT WWW.IRCGOV.COM.

Note to Committee Members: If you have trouble receiving this information please contact Current Development at 226-1242. **If you are unable to attend this meeting, please call Misty L. Pursel at 226-1442.** In order to maintain your position on the Board, you must not have more than three unexcused absences. Please bring your LDR's to the meeting.

cc: Joseph Baird Mike Zito Bob Keating Stan Boling
Misty Pusel Scott Johnson Nancy Offutt John Carroll
Bill McCain Sharon Brower Frank Johnson Penny Chandler
Mark Scott Robert Poore Press

Anyone who needs a special accommodation for this meeting may contact the County's Americans with Disabilities Act Coordinator at 226-1223, (TDD #772-770-5215) at least 48 hours in advance of the meeting. Any person who may wish to appeal any decision made at this meeting will need to ensure that a verbatim record of the proceedings is made, which includes testimony and evidence upon which the appeal is based.

PROFESSIONAL SERVICES ADVISORY COMMITTEE

PSAC MINUTES

Friday October 5, 2007

Indian River County Administration Building B, 1st Floor, Room 501
1800 27th Street, Vero Beach, FL 32960

MEMBERS PRESENT:

Warren Dill, Vice Chairman	Law Appointee
Robert Gaskill	Architect Appointee
Peter Robinson	Development Appointee
John Blum	Civil Engineer Appointee
Robert Brackett	Finance and Business Appointee
Linda Schlitt Gonzalez	Real Estate Broker Appointee
Stephen Moler	Engineer Appointee
George Kulczycki	Environmental Science Appointee
Frank Johnson (alternate)	Engineer/Surveyor Appointee

MEMBERS ABSENT:

Alan Schommer	General Contractor Appointee
Todd Smith	Engineer Appointee
Ryan Morrell	Environmental Issues Appointee
Robert Poore	Finance and Business Alternate
Mark Scott (unexcused)	Small Business Owner Alternate

STAFF PRESENT

Bob Keating	Community Development Director
Stan Boling	Planning Director
George Glenn	Assistant County Attorney

OTHERS PRESENT

Joseph Paladin	Growth Awareness Committee
Chuck Mechling	Pointe West
Nancy Offutt	Treasure Coast Builders Association
Andrew Kennedy	P and S Properties
Brian Curley	P and S Properties

(Note: The new format of the written minutes will only consist of the following items: agenda order, motions, and decisions requiring action. The numbers in parenthesis correspond to the approximate location of these items in the audio recording of the meeting. The recording is available at www.ircgov.com/Boards/PSAC/2007.htm.)

1. CALL TO ORDER (00:00:21)

2. ELECTION OF CHAIRMAN (00:01:08)

ON MOTION by Mr. Dill, **SECONDED** by Mr. Gaskill, the members voted unanimously (9-0) to install Mr. Peter Robinson as Chairman.

3. APPROVAL OF MINUTES (00:01:39)

ON MOTION by Mr. Gaskill, **SECONDED** by Mr. Brackett, the members voted unanimously (9-0) to approve the Minutes of the June 21, 2007 meeting.

4. OLD BUSINESS (None)

5. NEW BUSINESS (00:01:53)

A. Consideration of Proposed LDR Amendments Prohibiting Citrus Greening Host Plants in New Development Projects

ON MOTION by Mr. Dill, **SECONDED** by Mr. Moler, the members voted unanimously (9-0) to approve staff recommendation subject to the following addition:

“Governmental institutions or other research centers under contract with governmental agencies conducting scientific research are exempt from any regulations prohibiting the planting of Caribbean fruit fly and citrus greening host plants. Any person utilizing this exemption must verify their status with the Director of the Community Development Department.” (00:12:18)

B. Consideration of Proposed LDR Amendments to Chapter 910 Concurrency Regulations and Allowance for “Vesting” Concurrency (00:13:50)

ON MOTION by Mr. Dill, **SECONDED** by Mr. Brackett, the members voted (8-1) to approve staff recommendation with the provision that the staff create mechanism that will inform lot buyers that concurrency may not be available in the future. (00:11:51)

C. Consideration of Proposed LDR Amendments to chapter 934 Regulations for Mines in Agricultural Areas (01:14:33)

ON MOTION by Mr. Brackett, **SECONDED** by Mr. Robinson, the members voted (8-1) to approve staff recommendation with the provision that the staff look into a more flexible buffer zone and more viable schedule for hours of operation. (01:28:33)

There being no further business, the meeting was adjourned. (01:34:05)

INDIAN RIVER COUNTY, FLORIDA

MEMORANDUM

TO: Honorable Members of the Professional Services Advisory Committee

THROUGH: Robert M. Keating, AICP *AMK*
Community Development Director

FROM: *MS*
Stan Boling, AICP
Planning Director

George Glenn
Assistant County Attorney

DATE: November 27, 2007

SUBJECT: **Consideration of Proposed Amendments to Chapter 973 Public Nuisance for Weed Maintenance Regulations and the Nuisance Abatement Process**

It is requested that the data herein presented be given formal consideration by the Professional Services Advisory Committee at its regular meeting of December 6, 2007.

BACKGROUND

At its meeting of September 11, 2007, the Board of County Commissioners (BCC) directed the Attorneys Office and staff to initiate two amendments to the county's public nuisance ordinance, Chapter 973. The BCC directed that the amendments include creation of a new nuisance abatement process whereby the county could take action to address serious health and safety violations if conventional code enforcement efforts fail. This directive was prompted by an egregious code violation on a site in Vero Lake Estates involving junk, trash, debris, excessive weed growth, and an abandoned residence under construction. Despite fines imposed for these violations, no corrective actions have been taken by the owner. In addition, the BCC directed that the amendments include a provision to apply weed maintenance standards to multi-family projects. This directive was prompted by recent complaints from Vista Gardens and Vista Royale residents regarding tall weeds and grass associated with the inactive golf course that is associated with those Vista projects.

In response to the BCC's directives, staff and the County Attorney's Office drafted amendments to Chapter 973 and held an advertised public workshop on October 24, 2007. Based on input from that workshop, staff and attorney's office have revised the draft. The PSAC is now to consider the proposed amendments and is to make a recommendation to the BCC to adopt, adopt with changes, or reject the proposed amendments. The proposed amendments will also be heard by the Planning & Zoning Commission on December 13, 2007 and will be scheduled for a BCC hearing to be held in January 2008.

ANALYSIS

The proposed amendments are contained in the attached draft ordinance, and address both issues contained in the BCC's September 11th directives.

- **Nuisance Abatement**

Under the county's existing public nuisance regulations, two options exist for bringing code violators into compliance. The first is to bring the purported violator in front of the Indian River County Code Enforcement Board. If a nuisance is not abated after notice to abate is provided to a respondent, the case is presented to the Code Enforcement Board for an evidentiary hearing to determine whether a violation exists. If the board determines that a violation does exist, a timeframe is given for the violator to come into compliance. If the violator does not come into compliance, the Code Enforcement Board enters a fine that is recorded as a lien against real and personal property of the violator. The typical fine accrues at a rate of \$100.00 per day.

The second option for bringing a code violator into compliance is to have the code inspector issue an order to the violator to abate the nuisance within 30 days. If the violation is not abated within 30 days, the Board of County Commissioners may direct the County Administrator to abate the nuisance by authorizing the county's employees, servants, agents or contractors to enter upon the property and take whatever action is necessary to abate the nuisance. The cost of county abatement is subsequently recorded as a lien against the property.

The code currently states that selection of either of the two remedy options precludes the enforcement of the other. With the Code Enforcement Board hearing nearly all code violations, the option of authorizing the county to abate the nuisance has been foreclosed. The proposed amendments to the Indian River County Code §973 are meant to streamline the enforcement process. Under the proposed changes to the abatement process of Code §973, all purported violators would be sent to the Code Enforcement Board. The board would continue to apply the same procedures as it has in the past- an evidentiary hearing and then a compliance hearing, if necessary.

If the Code Enforcement Board determines through a compliance hearing that the violator is still not in compliance with section 973 and that the violation presents *a serious threat to the public health, safety, and welfare or if the violation is irreparable or irreversible in nature*, then the Code Enforcement Board may direct staff to notify the Indian River County Board of County Commissioners which, no sooner than thirty (30) days after the compliance hearing, may issue an order to direct the County Administrator (or a designee for the County Administrator) to abate the nuisance, authorizing the county's employees, servants, agents or contractors to enter upon the property at all reasonable times and take whatever action is necessary to abate the nuisance.

The additional finding by the Code Enforcement Board that the violation presents a serious threat to the public health, safety, and welfare or that the violation is irreparable or irreversible in nature is what triggers the option for the abatement action. If this finding is made, the Code Enforcement Board may direct staff to notify the Board of County Commissioners, which may then direct the County Administrator to authorize the abatement of the nuisance.

- **Weed Maintenance**

The county's existing weed maintenance regulations are contained in 901 (Definitions) and 973.03 of the Public Nuisance ordinance, and have been in effect for over 15 years. The definition of "weeds" includes untended dead or living grass or grass-like vegetation in an unkempt yard, which constitute a health or fire hazard. The definition specifically excludes trees, shrubs, and understory vegetation on undeveloped wooded lots. No changes to the existing definition are proposed.

Under current 973.03 regulations, an accumulation of excessive weeds is deemed to constitute a public nuisance based on health, safety, and welfare. The current criteria for a weed nuisance are:

- a) Untended weeds in excess of 18" in height, and
- b) Untended weeds located on a platted lot or tract in a subdivision where 50% or more of the lots are developed.

Exemptions to these weed regulations include:

- Agriculturally zoned land
- Conservation land (including conservation easements and natural set-aside area)
- Uncleared lots (left "natural")

No changes to the exemptions are proposed.

The existing regulations have worked for many years in controlling excessive weed nuisances. The regulations, however, were designed to address developed single-family and cleared lots in significantly developed subdivisions and do not apply to unplatted multi-family developments such as Vista Gardens and Vista Royale. To address weed nuisances in developments such as the Vista projects, the proposed amendments include wording that applies the same weed maintenance regulations to multi-family developments as are applied to single-family subdivisions.

Staff surveyed many other local governments in Florida and found a range of weed maintenance regulations. Most regulations include maximum weed heights. Also, the survey information indicates that cities tended to have lower weed height thresholds than counties. Some jurisdictions apply weed maintenance standards only within certain distances of structures, road rights-of-way, or property lines. Other jurisdictions apply weed maintenance regulations to entire lots.

Participants at the October 24th workshop advocated reducing the county's maximum weed height from 18" to 12". Staff's greatest concern about reducing the maximum weed height relates to enforcement and practicality, especially during the area's robust peak growing season. Staff has concluded that decreasing the maximum weed height from 18" to 12" is justifiable based on regulations in other jurisdictions but should be accompanied by a recognition that compliance timeframes may be longer during peak growing season (e.g. July - October). Therefore, the amendments propose to reduce the maximum weed height from 18" to 12".

RECOMMENDATION:

Staff recommends that the Professional Services Advisory Committee recommend that the BCC adopt the proposed amendments.

ATTACHMENT:

1. Minutes from September 11, 2007 Board of County Commissioners Meeting
2. Summary of October 24, 2007 Public Workshop on Chapter 973
3. Other Jurisdiction Weed Control/Maintenance Regulations
4. Proposed LDR Amendment to 973

September 11, 2007

REGULAR MEETING OF THE BOARD OF COUNTY
COMMISSIONERS OF INDIAN RIVER COUNTY

The Board of County Commissioners of Indian River County, Florida, met in Regular Session at the County Commission Chambers, 1801 27th Street, Vero Beach, Florida, on Tuesday, September 11, 2007. Present were Chairman Gary C. Wheeler, Vice Chair Sandra L. Bowden, Commissioners Wesley S. Davis, Joseph E. Flescher and Peter D. O'Bryan. Also present were County Administrator Joseph A. Baird, County Attorney William G. Collins II, and Deputy Clerk Athena Adams.

1. CALL TO ORDER

Chairman Wheeler called the meeting to order at 9:00 a.m. He requested that a moment of silence be observed in respect of the victims of the September 11, 2001 tragedy in New York.

2. INVOCATION

~~Teddy Floyd of the Indian River County Sheriff's Department—Crime Prevention Unit,~~ Planning Director Stan Boling delivered the Invocation.

3. PLEDGE OF ALLEGIANCE

Commissioner Peter D. O'Bryan led the Pledge of Allegiance to the Flag.

ON MOTION by Vice Chair Bowden, SECONDED by Commissioner Davis, the Board unanimously approved Kimley-Horn & Associates, Inc.'s request for a one-year extension of the revised, approved PD plan for Sam's Club with all original approval conditions to remain in effect, as recommended in the memorandum of September 4, 2007. The new site plan approval expiration date will be July 18, 2008.

8.A. CONSTITUTIONAL OFFICERS AND GOVERNMENTAL AGENCIES - NONE

9. PUBLIC ITEMS -

A. PUBLIC HEARINGS - NONE

9.B. PUBLIC DISCUSSION ITEMS

1. REQUEST TO SPEAK FROM RAYMOND W. BATT ON BEHALF OF VISTA GARDENS



Raymond Batt, 36 Vista Gardens Trail, speaking on behalf of the residents of Vista Gardens & Vista Royale, complained about weeds and the lack of maintenance to the Vista Meadows Golf Course. Among the list of concerns were: ponds shrinkage, ponds filled with scum, which impedes water run-off, drainage problems, the likelihood of severe flooding in the event of a storm, and snakes, which have become a public nuisance. He cited the Public Nuisance Code, which is supposed to protect them, and thought a simple solution would be an amendment to Chapter 973 LDR that would cover non-platted properties that are within or surrounded by condos or homeowners association communities.

Community Development Director Bob Keating reported that Community Development has been dealing with this for a while, and staff has sent out a Notice of Code Violation on the ponds. He acknowledged that Chapter 973 LDR does not give the County authority to take Code Enforcement or Nuisance Abatement action on a golf course. He explained that our regulations only prohibit weeds and grass over 18 inches in height. He then suggested the Board hear from Chuck Sullivan who was representing the Golf Course.

Director Keating and Director DeBlois responded to questions from the Board, which involved the time frame for the stormwater system clean up; if there were any responses to the Code Notices sent out, and whether there was a remedy. Chairman Wheeler thought they should hear from Mr. Sullivan before giving direction to staff.

Charles Sullivan, Jr., Vista Golf Corporation, argued that the golf course is a private business and private property which has gone out of business because it does not generate any money as a golf course, but they were trying to remedy that with a plan to open the driving range and a restaurant by 1st October, in the hope to generate some money to help with maintenance. They have scheduled a meeting to have the issue of stormwater resolved, and have mowed a substantial portion of the grass below 18 inches. He assured the Board that they want to solve the problems, but to maintain the grounds under golf course conditions is phenomenally expensive and they cannot afford to do that if the businesses are not open.

After in-depth discussions and debate about the issues to be first addressed, the Chairman opened the floor to public comments.

Charles Dvoran, of Grand Royale and Vista Royale Property Owners Association reported that Mr. Sullivan told them that he could run an 18-hole golf course, but he has to build on the other nine, which was not what he was hearing presently. Mr. Dvoran felt it should be out in the open that Vista intends to build.

Ron Schrader, owner of two units in Vista Gardens (Bldg. 4, #201 and Bldg. 1, #104), felt that conditions at the golf course have lowered their property values.

Anna Aymonin, 5 Vista Gardens Trail, Apt. 101, was one of the residents who saw a snake on the golf course, and wants to see the course maintained.

Chuck Riotta, Vista Gardens, Building 14 #102, bought into that property because of the scenic beauty, which is all gone now.

Katherine Sherry, owner of seven units at Vista Royale, and a member of the Golf Course Taskforce, was told by Mr. Sullivan, Jr., and his Father that they would mow the land or bush-hog it a couple times a year, and that has not been done.

Stella Wetzel, Vista Royale, argued that when the Sullivans took possession of the property it was in top shape, and they should have tried to maintain it.

Mr. Sullivan defended comments that purports they bit off more than they could chew. He further discussed the lease, and the difficulty of maintaining the golf course.

Vice Chair Bowden understood the frustration of living in a situation that is not pleasing. She urged Mr. Sullivan to get with the County Attorney's Office and staff to try to resolve the matter as quickly as possibly, and asked to be informed of the meeting date. Other Commissioners agreed that a cautious approach be taken when looking at the Ordinance

Chairman Wheeler desired to see staff review Chapter 973 and come back with some options. Commissioner Davis did not want to give false hope that an ordinance change would make the problems go away. The Commissioners saw the need to look to the future so this problem does not reoccur, and at the same time resolve the current issues with the golf course immediately.

There was CONSENSUS among Board members for staff to prioritize and deal with this matter as soon as possible.

No Board action required or taken.

The Chairman called a recess at 10:23 a.m., and reconvened the meeting at 10:38 a.m., with all members present.

2. REQUEST TO SPEAK FROM STEVE MYERS REGARDING REGIONAL RESIDUALS DEWATERING FACILITY OPERATIONS

Steve Myers requested that this item be deferred and placed under “Departmental Matters”, Item 11.J.1. Board members unanimously agreed.

3. REQUEST TO SPEAK FROM WILLIAM WELLS REGARDING RESOLUTIONS TO MATTERS BROUGHT TO THE COMMISSION

William Wells, 8800 44th Avenue, referred to a handout to Commissioners, which outlined a number of issues he was seeking to resolve. He disputed a survey from the County, which he claimed was made up after the fact, as well as the walls on the “8810 property”, which does not meet Code standards. He wanted closure and resolution of the issues, and wanted it in writing.

Administrator Baird addressed some of Mr. Wells’ concerns, and observed that the majority were St. Johns Water Management District problems, such as a dock permit, and a dock extension and relocation of a boatlift.

(Clerk’s Note: Vice Chair Bowden exited the meeting at 10:44 a.m.)

SUMMARY
PUBLIC WORKSHOP ON CHAPTER 973 PUBLIC NUISANCES
October 24, 2007
Indian River County Administration Complex Building "B"

Attendees:

Stan Boling	Planning Director
John Neary	Vista Royale
Joan Jarsulic	Vista Royale
Roland DeBlois	Chief of Environmental Planning/Code Enforcement
Brad & Gail Crowther	Vero Lake Estates
Ray Batt	Vista Gardens
Charles Riotto	Vista Gardens
Gary Wheeler	County Commissioner
Wesley Davis	County Commissioner
Peter O'Bryan	County Commissioner
Joe Flescher	County Commissioner
Steve Melchiori	On-Site Management (Pointe West)
Bob Keating	Community Development Director
Kathy Sherry	Vista Royale
Honey Minuse	IRNA
Beth Casano	Board of County Commissioners Office
George Glenn	County Attorney's Office

The workshop began shortly after 9:00 am

1. Weed Maintenance Requirements

- Powerpoint presentation by planning staff highlighted reasons for workshop, process for changing regulations, existing Indian River County weed regulations, weed regulations of other local governments, proposed regulations, and items staff considered while drafting its proposal.
- Comments from attorney's office emphasized obligation of consistent enforcement, reasonableness of regulations and need for consistent application, determination that county cannot require a golf course to be operated or maintained in "golf course condition".
- Comments from the public:
 - Residents appeared to support concept of draft ordinance to apply the same weed regulations to single-family and multi-family developments.
 - Residents strongly supported lowering the maximum allowed weed height from 18" to 12", noting several other local governments that have a 12" standard.
 - Residents want the proposed wording reviewed to ensure that golf course tracts (like those in Vista Royale/Vista Gardens) are covered by the proposed weed regulations.

- Several persons commented that the code enforcement process will allow months of time for an owner to comply with weed regulations.
- One comment was made regarding the need to look at the county-wide impacts of the proposed ordinance and to be careful not to focus only on Vista's situation and possibly over-react.
- Attendees discussed weed maintenance within public rights-of-way for roads, canals, and outfall ditches and expressed the need for good judgment in those cases.

2. Abatement of Nuisances by the County

- Powerpoint presentation by planning staff summarized the code enforcement process.
- Powerpoint presentation by attorney's office summarizing existing and proposed abatement provisions; and state statutes that authorize local governments to enforce codes through fines, liens, and abatement.
- A particular situation in Vero Lake Estates (overgrown lot with abandoned structure and debris) was discussed, including the fact that the owner was being fined and would not clean-up the site. Attendees agreed that such a situation should be a candidate for nuisance abatement, whereby the county would clean up the site and try to re-coup clean up costs.
- Attendees acknowledged staff's assertion that the county does not want to get into the mowing business.
- Attendees discussed the scenario of repeated abatement (multiple site clean ups and/or mowing over time). Staff agreed to revise the draft ordinance to allow for quicker BCC action on repeat abatement.
- Attendees discussed the possible increase in nuisance sites with increased foreclosures and situations where owners simply "walk away" from properties.
- Staff discussed timeframes for adopting changes to Chapter 973 (a few months) and code enforcement and abatement action timeframes after adoption of the proposed changes.

The workshop ended shortly before 11:30 am.

WEED CONTROL/MAINTENANCE REGULATIONS (OCTOBER/NOVEMBER 2007)

Jurisdiction	Properties/Areas Affected	Maximum Weed Height/Nuisance Criteria	Golf Course Maintenance
City of Vero Beach	All Properties	12"	No specific regulations
City of Sebastian	Improved Properties	10"	No specific regulations
Fellsmere	Cleared properties	12"	No specific regulations
Indian River Shores	Platted lots within 100' of a residence and the area of unplatted tracts within 100' of a residence	8"	No specific regulations
Orchid	All properties	Must be cut every 3 weeks from April 15 to October 15 (no height regulation)	No specific regulations
St. Lucie County	All properties	No vegetation height specified. Weeds considered violation if found to constitute an "unsanitary nuisance"	No specific regulations
Brevard County	Properties with excessive, untended weed growth within 100' of improved property or public road right-of-way	No vegetation height specified. Weeds considered violation if untended vegetation found to provide a "harboring place" for rodents, pests, mosquitoes or found to degrade the appearance of a neighborhood	No specific regulations
Martin County	Properties with excessive, untended weed growth within 100' of improved property (not including "undisturbed original natural growth")	18"; violation occurs to the extent that untended vegetation provides breeding place for mosquitoes or rodents, or may become a fire hazard or "adversely affect or impair the economic welfare of adjacent property"	No specific regulations
Palm Beach County	Lots with uncultivated vegetation (not including "native vegetation" in its natural state, or mangroves)	18" on vacant lots 7" on developed residential or non-residential lots Note: On parcels over 1/2 acre, weeds must be maintained only in 25' wide strip next to adjacent property	No specific regulations
Sarasota County	Urban areas and platted rural and semi-rural areas (not including natural, preservation, wetlands, or littoral zone areas)	12"; violation may be found if excessive vegetation growth provides harbor for pests, creates fire hazard, or decreases value of neighboring properties	No specific regulations

WEED CONTROL/MAINTENANCE REGULATIONS (OCTOBER/NOVEMBER 2007)

Jurisdiction	Properties/Areas Affected	Maximum Weed Height/Nuisance Criteria	Golf Course Maintenance
Lee County	Urban areas where nuisance growths are within 150' of a developed adjacent property	Violation if 16" and covers more than 50% of the lot and which creates a fire hazard, health hazard, or impairs economic welfare	No specific regulations
Collier County	Improved lots and unimproved subdivided parcels and lots where at least 50% of the property can be mowed by bushhog or smaller mower	18"	No specific regulations
Osceola County	All residential (including multi-family), commercial and industrial properties	18" on unimproved lots within 200' of residential, commercial, industrial structure 12" on improved lots within 200' of residential, commercial, industrial structure	No specific regulations
Indian River County [EXISTING REGULATIONS]	Cleared lots in platted subdivisions where 50% or more of the subdivision lots are developed	18"	No specific regulations
Indian River County [PROPOSED REGULATIONS]	Cleared lots in platted subdivisions where 50% or more of the subdivision lots are developed and Multi-family developments where over 50% of the units in the project or project phase are developed.	18"	No specific regulations

CHAPTER 973. PUBLIC NUISANCE
TABLE INSET:

Sec. 973.01.	Short title and purpose.
Sec. 973.02.	Definitions referenced.
Sec. 973.03.	Restrictions.
Sec. 973.04.	Abatement of nuisance.
Sec. 973.05.	Public hearing on nuisance.
Sec. 973.06.	Assessment for abatement of nuisance.
Sec. 973.07.	Reserved.
Sec. 973.08.	Right to hearing on assessment.
Sec. 973.09.	Serving of notice.

Section 973.01. Short title and purpose.

This chapter shall be known and may be cited as the "Indian River County Public Nuisance Ordinance."

For the purpose of promoting the health, safety and general welfare of the community, the board of county commissioners of Indian River County finds it necessary that lands in the unincorporated areas of Indian River County be cleared of any noxious substance or material which might tend to be a fire hazard or other health hazard, or which is considered to be obnoxious and a nuisance to the general public. Such substances or material shall include, but not be limited to, the following: garbage, trash, weeds, junk, debris, unserviceable vehicles, dead trees posing a health or safety hazard, or any other offensive materials which constitute a nuisance as provided for in this chapter.

(Ord. No. 90-16, § 1, 9-11-90; Ord. No. 92-11, § 9, 4-22-92)

Section 973.02. Definitions referenced.

The definitions of certain terms used in this chapter are set forth in Chapter 901, Definitions, of the Indian River County Land Development Code.

(Ord. No. 90-16, § 1, 9-11-90)

Section 973.03. Restrictions.

Accumulations of debris, garbage, junk, trash, weeds, unserviceable vehicles, dead trees posing a health or safety hazard, or other noxious materials, are hereby declared a public nuisance and shall be removed from all lots, parcels and tracts of land, public or private, unless otherwise permitted by the terms of this article.

(1) *Weed clearance.* The following provisions shall apply to weeds as defined in Chapter 901:

~~(a) The accumulation of weeds in excess of eighteen (18) inches in height is hereby prohibited on any lot, parcel or tract of land which lies contiguous to a commercial or residential structure and within a platted, recorded subdivision where the platted lots are at a minimum of fifty (50) percent developed. Agriculturally zoned land and land within~~

~~conservation and/or preservation easements or conservation/preservation areas designated on approved development plans shall be exempt from this section.~~

(a) Prohibition .

1. The accumulation of weeds in excess of twelve (12) inches in height is hereby prohibited on any lot, parcel, tract of land, common area, open space area, recreational tract, or landscape buffer within either a platted, recorded subdivision where the platted lots are at a minimum of fifty (50) percent developed with residential units, or within or internal to a multifamily development where a minimum of fifty (50) percent has been developed with project units.

(b) Exemptions from Prohibitions.

1. Agriculturally zoned land.

2. Land with a conservation designation or within conservation and/or preservation easements.

3. Areas designated on approved development plans as conservation or preservation areas.

4. Areas authorized or required by jurisdictional agency permits to remain natural.

5. Uncleared lots within platted, recorded subdivisions.

(bc) Maintenance of weeds to satisfy the eighteen-inch maximum height limitation which entails the grubbing (uprooting) of vegetation shall be subject to the provisions of Chapter 927, Tree Protection and Land Clearing, of the Indian River County Land Development Code.

(ed) The existence of untended weeds, as defined in Chapter 901, in excess of eighteen (18) inches in height on any lot, parcel or tract of land as described in subsection 973.03(1)(a) shall be prima facie evidence of intent to violate and of a violation of this section by the owner, owners and occupant of said land.

~~(d) Upon receipt of a notice of violation of section 973.03(1)(a), the owner, lessee and/or tenant of the involved property shall abate such violation within the time specified in section 973.04 of this chapter, and after such time shall be jointly and severally liable for any continuation of such violation.~~

(2) Restriction of garbage, trash, junk, debris or unserviceable vehicles in or on public or private property:

(a) No person shall discard, place, abandon, accumulate, or permit or cause to be discarded, placed, abandoned or accumulated any junk, wrecked or unserviceable vehicle or the parts thereof on property in the unincorporated areas of the county unless such vehicles or parts are stored in an enclosed structure or at an authorized junk or auto wrecking yard. No person shall throw, discard, place, abandon, accumulate, or permit or cause to be thrown, discarded, placed, abandoned or accumulated any junked or unserviceable refrigerator, stove, washing machine, water heater, or other household appliance or equipment, or any garbage, trash, junk, debris or unserviceable vehicles on property in the unincorporated areas of the county except at an authorized junk yard, or at a landfill or other solid waste disposal site that holds a permit issued by the Florida

Department of Environmental Regulation pursuant to Part 4 of Chapter 403, Florida Statutes, and is operated by, or under franchise from, the county.

(b) The existence of any garbage, trash, junk, debris or unserviceable vehicle in or on any unauthorized property in the unincorporated area of the county, whereby said material contains evidence of ownership, shall be prima facie evidence of intent to violate and violation of this section by the person whose name appears on such material.

~~(c) Upon receipt of a notice of violation of section 973.03(2)(a), the owner, lessee and/or tenant of the involved property and/or any other identified violator, shall abate such violation within the time specified in section 973.03 of this chapter, and after such time shall be jointly and severally liable for any continuation of such violation. (Ord. No. 90-16, § 1, 9-11-90; Ord. No. 92-11, § 10, 4-22-92)~~

Section 973.04. Abatement of nuisance.

(1) ~~Whenever a county code inspector determines that a public nuisance as described in section 973.03 of this chapter exists, the community development director shall have the authority to direct the inspector to either: the inspector shall have the authority to serve the violator with notice to appear before the Indian River County Code Enforcement Board and shall hold hearings in the manner provided in Chapter 162, Florida Statutes.~~

(2) If the Code Enforcement Board determines through a compliance hearing that the violator is still not in compliance with section 973.03 and that the violation presents a serious threat to the public health, safety, and welfare or if the violation is irreparable or irreversible in nature, then the Code Enforcement Board shall direct staff to notify the Indian River County Commission, who no sooner than thirty (30) days after the compliance hearing, may issue an order to direct the County Administrator or a designee for the County Administrator, to abate the nuisance, authorizing the county's employees, servants, agents or contractors to enter upon the property at all reasonable times and take whatever action is necessary to abate the nuisance.

(3) Once the County has abated a specific nuisance under this section, no further code enforcement board determination is needed for the County to take future abatement action relating to the reoccurrence of the nuisance violation.

(4) The primary method for bringing code violators into compliance shall continue to be the fines imposed by the Code Enforcement Board and nothing in this section shall preclude the Code Enforcement Board from issuing a fine relating to any nuisance violation. A nuisance violation need not rise to the level of a serious threat to the public health, safety, welfare or be in the nature of a violation that is irreparable or irreversible for the Code Enforcement Board to issue an order of non-compliance with section 973.03.

~~(a) Serve the violator with notice to appear before the Indian River County Code Enforcement Board in the manner provided in the Indian River County Code of Laws and Ordinances. In the event that the community development director elects to pursue~~

remedies for violation of section 973.03 of this article before the Indian River County Code Enforcement Board, the provisions of sections 973.04 through 973.09 of this chapter shall not be applicable to those actions; or

(b) The inspector shall serve notice in the manner provided in section 973.09 of this chapter to the owner, owners and occupant of the property upon which the nuisance lies as provided in this section in substantially the following form:

NOTICE

Date:

To:

Address:

Property:

As owner of record or occupant of the above-described property located in Indian River County, Florida, you are hereby notified that a nuisance exists upon such property, contrary to Section _____ of the Code of Laws and Ordinances of Indian River County. The details of the violation are as follows:

[List Details:]

YOU ARE HEREBY ORDERED to abate the nuisance within thirty (30) days. Upon your failure to abate this nuisance, the Code Inspector shall notify the Board of County Commissioners of Indian River County, and the Board will take steps to abate the above-stated nuisance and the cost thereof will be levied as an assessment against the property. You are further notified that if you wish to contest the Code Enforcement Officer's determination that a public nuisance exists, you may apply for a hearing before the Board of County Commissioners within fifteen (15) days from the date of this notice.

(e) Selection of a remedy under this section shall preclude the later application of any other remedy under this section on the same violation but shall not prevent the application of other available remedies if later violations are discovered involving the same property.

(2) If the property owner or someone on his behalf has not abated the nuisance within thirty (30) days from the date of receipt of notice, the county administrator shall have the authority to issue an order to abate the nuisance, authorizing the county's employees, servants, agents or contractors to enter upon the property and take whatever action is necessary to abate the nuisance.

(Ord. No. 90-16, § 1, 9-11-90)

Section 973.05. Public hearing on nuisance. Reserved.

(1) A property owner may request a public hearing to contest the code enforcement officer's determination that a nuisance exists by writing to the clerk of the board of county commissioners within fifteen (15) days of the date of receipt of notice as provided for in section 973.04 of this chapter. The clerk shall set a date for hearing and shall notify the owner and adjacent property owners in writing at least fifteen (15) days prior to the hearing date.

(2) At a public hearing, the owner, owners, occupant or representative of the owner, owners or occupant of the lot, parcel or tract of land or any interested person shall have the right to present any relevant or material facts or evidence on the following issues:

(a) Why the condition of such lot or parcel does not create a public nuisance; or

(b) Why the cost of the abatement of such nuisance should not be paid by the owner; or

~~(e) Why the cost of the abatement of such nuisance should not be assessed against such lots, parcel or tract or land.~~

~~(3) At the conclusion of each hearing, the board shall determine whether a nuisance exists and, if so, the board shall, by resolution, declare the nature of the nuisance, describing the lot, parcel or tract of land involved, determine the name of the owner of such land, and shall serve a copy of said resolution on the owner by registered mail, return receipt requested. The owner shall have ten (10) days from the date of such resolution to correct the condition and situation described in such resolution. In the event the owner fails to abate the nuisance within ten (10) days the county shall take measures to abate the nuisance and remedy the condition or situation and the cost of such work, including labor, equipment, landfill, recording and administrative costs, together with costs of foreclosure or collection, including attorney's fees, shall be taxed to the owner and become a lien against such lot, parcel or tract of land. Authorized representatives of the county shall have the right to go upon the land described in such resolution at all reasonable times to abate the nuisance and to remedy the condition or situation found to exist.~~

~~(4) If after hearing, the board determines a nuisance as described in the notice of violation does not exist, or has been abated prior to hearing, then such notice of violation as served upon the owner or occupant shall be considered null and void and of no effect, and no action shall be taken by the county. Notice of such determination shall be sent to the owner or the occupant of such parcel of land by mail.~~

~~(Ord. No. 90-16, § 1, 9-11-90)~~

Section 973.06. Assessment for abatement of nuisance.

~~(1) After abatement of nuisance by the county, the cost thereof to the county as to each lot, parcel or tract of land shall be calculated and reported to the board of county commissioners. Thereupon, the board of county commissioners, by resolution, shall assess such costs against such lot, parcel or tract of land. Such resolution shall describe the land and state the cost of abatement, which shall include an administrative cost of seventy-five dollars (\$75.00) per lot. Such assessment shall be a legal, valid and binding obligation upon the property against which made until paid. The assessment shall be due and payable thirty (30) days after the mailing of notice of assessment after which interest shall accrue at the rate of twelve (12) percent annum on any unpaid portion thereof.~~

(1) If the county abates a nuisance as defined in Section 973.03, the cost thereof to the county as to each lot, parcel or tract of land shall be calculated and reported to the Code Enforcement Board. Thereupon, the Code Enforcement Board, shall issue an order to assess such costs against such lot, parcel tract of land, common space, open space, recreation tract, or landscape buffer. Such order shall describe the land and state the cost of abatement, which shall include an administrative cost of seventy-five dollars (\$75.00) per abatement. Such assessment shall be a legal, valid and binding obligation upon the property against which made until paid. The assessment shall be due and payable forty-five (45) days after the mailing of notice of assessment after which interest shall accrue at the rate prescribed on any unpaid portion thereof.

(2) The clerk shall mail a notice to the record owner or owners of each of said parcels of land described in the resolution, at the last available address for such owner or owners, which notice may be in substantially the following form:

NOTICE

Date:
To:
Address:
Property:

As the record owner of the property above described you are hereby advised that Indian River County, Florida did on the _____ day of _____ 2019 _____, order the abatement of a certain nuisance existing on the above property, sending you notice thereof, such nuisance being:

[Describe Nuisance Briefly]

A copy of such notice has been heretofore sent you. You failed to abate such nuisance; whereupon, it was abated by Indian River County at a cost of \$ _____. Such cost, by resolution of the Board of County Commissioners by order of the Code Enforcement Board of Indian River County, Florida has been assessed against the above property on _____, 1920 _____, and shall become a lien on the property ~~thirty-fourty-five~~ (3045) days after such assessment. You may request a hearing before the Code Enforcement Board Board of County Commissioners to show cause, if any, why the expenses and charges incurred by the County under this ordinance are excessive or unwarranted or why such expenses should not be charged against the property. Said request for hearing shall be made to the Clerk of the Board of County Commissioners Code Enforcement Board in writing within thirty (30) days from the date of the assessment.

(3) If the owner fails to pay assessed costs within ~~thirtyfourty-five~~(3045) days, a certified copy of the assessment shall be recorded in the official record books of the county. The assessment shall constitute a lien against the property ~~eeequal with the lien of all state, county and special district liens, as of the date of filing with the clerk and shall be collectible in the same manner as county tax liens.~~ No assessment lien will be recorded if a hearing on whether the assessment is fair, reasonable and warranted is timely requested.

(4) If the Code Enforcement Board determines after hearing that the assessment is fair, reasonable, and warranted, a certified copy of the assessment order shall be recorded. If the board determines that the charges are excessive or unwarranted, it shall direct the county administrator to recompute the charges and the board shall hold a further hearing after notice to the owner upon the recomputed charges.

(54) In an action to foreclose liens, it shall be lawful to join one or more lots, parcels, or tracts of land, by whomever owned, if assessed under the provisions of this chapter. The property subject to lien may be redeemed at any time prior to sale by the owner by paying a total amount due including interest, court costs and other costs incident to the action.

(65) Upon payment of lien, the county attorney or his designee shall, by appropriate means, evidence satisfaction and cancellation of such lien.

(Ord. No. 90-16, § 1, 9-11-90)

~~Section 973.07. Reserved.~~

~~Section 973.08. Right to hearing on assessment.~~

~~(1) Prior to the expiration of the thirty (30) days provided in section 973.04(2) of this chapter, any owner shall have a right to have a hearing before the board to show cause, if any, why the expenses and charges incurred by the county under this chapter are excessive or unwarranted or why such expenses should not constitute a lien against said property. However, nothing contained in this section shall be construed to disturb or permit a review of the determination by the board of the existence of a public nuisance under this chapter.~~

~~(2) Public hearings under this section shall be held by the board of county commissioners upon written application for hearing made to the clerk of the board within thirty (30) days after the resolution of assessment described in section 973.06, and an application for hearing, properly filed, shall stay the recording of the assessment until a hearing has been held and a decision rendered by the board.~~

~~(3) If the board determines after hearing that the assessment is fair, reasonable, and warranted, the assessment resolution shall be recorded. If the board determines that the charges are excessive or unwarranted, it shall direct the county administrator to recompute the charges and the board shall hold a further hearing after notice to the owner upon the recomputed charges.~~

~~(Ord. No. 90-16, § 1, 9-11-90)~~

~~Section 973.09. Serving of notice.~~

~~The requirement of serving of notice under the provisions of this chapter shall be met by either sheriff's service, or by mailing notice by registered or certified mail, return receipt requested, to the owner at the address indicated on the records of the Indian River County property appraiser of such lot, parcel or tract of land and shall be deemed served when received. If the lot, parcel or tract of land is not occupied, a copy of such notice shall also be placed in a conspicuous place upon the property. In the event there is an occupied dwelling on such lot, or lots, parcel or tract of land, a copy of the notice shall also be served upon the occupant in the manner provided herein.~~

~~(Ord. No. 90-16, § 1, 9-11-90)~~



Office of
**INDIAN RIVER COUNTY
ATTORNEY**

William G. Collins II, County Attorney
William K. DeBaal, Deputy County Attorney
Marian E. Fell, Assistant County Attorney
George A. Glenn, Assistant County Attorney

MEMORANDUM

TO: The Professional Services Advisory Committee

FROM: *WC* William G. Collins II – County Attorney

DATE: November 30, 2007

SUBJECT: Draft Mining Moratorium Ordinance

On October 23, 2007 the Board of County Commissioners directed preparation of an ordinance to halt the acceptance, processing, and issuance of new mining permits in the unincorporated area of Indian River County. Moratoriums must be adopted by ordinance and after public hearing. Florida Statutes require one public hearing with ten days' notice, however case law in Florida has developed to hold that a moratorium is as significant an event as a rezoning and, thus, must be adopted with at least as much formality and due process as a rezoning. Florida Statutes on rezonings initiated by the County involving more than 10 acres require two advertised public hearings. One must be held after 5:00 p.m. on a weekday, and the second must be held at least ten days after the first hearing. Because case law treats moratorium in the same manner as rezonings in terms of process, this matter will be presented to the Planning and Zoning Commission for a recommendation, just as a rezoning application would be presented to the Planning and Zoning Commission for a recommendation to the County Commission under the provisions of the Indian River County Code.

RECOMMENDATION:

Make any recommendations to the Board of County Commissioners on the proposed mining moratorium and begin thinking about new mining regulations that should result from such a moratorium.

WGC/nhm

Attachment:

draft mining moratorium ordinance

cc: Robert M. Keating, AICP – Community Development Director
Stan Boling, AICP – Planning Director
George Glenn – Assistant County Attorney

ORDINANCE NO. 2007-_____

DRAFT

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF INDIAN RIVER COUNTY, FLORIDA, IMPOSING A MORATORIUM ON THE ACCEPTANCE OF APPLICATIONS; PROCESSING OF APPLICATIONS; AND ISSUANCE OF MINING PERMITS; PROVIDING FOR PROHIBITION; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; SETTING FORTH EXPIRATION AND EFFECTIVE DATES.

WHEREAS, pursuant to Section 1(f), Article VIII, of the Florida Constitution and Chapter 125, Florida Statutes, Indian River County is authorized and required to protect the public health, safety and welfare and may exercise any power for governmental purpose except when expressly prohibited by law; and

WHEREAS, pursuant to Section 163.3202, Florida Statutes, Indian River County has enacted land development regulations, consistent with its adopted comprehensive plan, which protect the quality of life in Indian River County; and

WHEREAS, the Board of County Commissioners has adopted Indian River County Code Chapter 934, Excavation and Mining; and

WHEREAS, at its October 23, 2007 meeting the Board of County Commissioners was advised of numerous traffic hazards and accidents involving mining trucks on unpaved haul routes; and

WHEREAS, the Board has determined improvements must be made to the notice and traffic safety provisions of Chapter 934; and

WHEREAS, the Planning and Zoning Commission considered this matter and made a recommendation of _____ of a mining permit moratorium on December 13, 2007; and

WHEREAS, the Board of County Commissioners has held two public hearings on this proposed moratorium on mining permitting and heard public input; and

WHEREAS, the Board of County Commissioners wishes to maintain the status quo with respect to mining activity during the drafting process to ensure that the community's traffic safety problems are addressed through this ordinance rather than exacerbated during the time it takes to formulate any desired modifications to the excavating and mining ordinance,

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF INDIAN RIVER COUNTY, FLORIDA, that:

SECTION 1. PROHIBITION

No mining permit applications shall be accepted, processed, or issued until July 8, 2008.

SECTION 2. CONFLICTS

The application of any Indian River County ordinance in conflict herewith is hereby suspended during the time period set forth in Section 1 to the extent of such conflict.

SECTION 3. SEVERABILITY

If any section, sentence, clause, or phrase of this ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this ordinance.

SECTION 4. EFFECTIVE DATE

This ordinance shall take effect upon filing with the Secretary of State.

SECTION 5. EXPIRATION DATE

This ordinance shall expire July 8, 2008, unless earlier terminated or further extended by ordinance.

This ordinance was advertised in the Vero Beach Press-Journal on the _____ day of December, 2007, for a public hearing to be held on the 18th day of December, 2007, and was advertised in the Vero Beach Press-Journal on the ____ day of January, 2008 for a public hearing to be held on the 8th day of January, 2008 at which time it was moved for adoption by Commissioner _____, seconded by Commissioner _____, and adopted by the following vote:

Commissioner Wesley S. Davis	_____
Commissioner Joseph E. Flescher	_____
Commissioner Gary C. Wheeler	_____
Commissioner Peter D. O'Bryan	_____
Commissioner Sandra L. Bowden	_____

ORDINANCE NO. 2007-_____

The Chairman thereupon declared the ordinance duly passed and adopted this 8th day of January, 2008.

BOARD OF COUNTY COMMISSION
INDIAN RIVER COUNTY, FLORIDA

By: _____, Chairman

ATTEST: Jeffrey K. Barton, Clerk

By: _____
Deputy Clerk

ACKNOWLEDGMENT by the Department of State of the State of Florida, this ____ day of _____, 2008.

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

BY *William G. Collins II*
WILLIAM G. COLLINS II
COUNTY ATTORNEY